

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: June 21, 2006

Division: County Attorney

Bulk Item: Yes X No     

Department: County Attorney

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**AGENDA ITEM WORDING:**

Approval to advertise a public hearing for an ordinance amending Sec. 6-90 of the Monroe County Code relating to buildings and construction and providing a fine schedule and imposition of civil penalties, administrative costs and liens.

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**ITEM BACKGROUND:**

Upon staff review, several sections of Section 6-90 were found to be inconsistent with Chapter 489. In addition, the provision allowing for on unpaid fines cited the incorrect Florida Statute and County Code Chapter and therefore, precluded the use of foreclosure as an enforcement tool. The proposed amendments align those sections that were previously inconsistent with chapter 489 and provide for the use of foreclosure proceedings.

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**PREVIOUS RELEVANT BOCC ACTION:**

Section 6-90 was last amended by the BOCC by *Ordinance 023-2003*

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**CONTRACT/AGREEMENT CHANGES:**

NA

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**STAFF RECOMMENDATIONS:**

Approval to advertise.

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**TOTAL COST:** N/A

**BUDGETED:** Yes      No     

**COST TO COUNTY:**                     

**SOURCE OF FUNDS:**                     

**REVENUE PRODUCING:** Yes      No     

**AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty      OMB/Purchasing      Risk Management     

**DIVISION DIRECTOR APPROVAL:**

 6/6/06  
SUZANNE A. HUTTON, COUNTY ATTORNEY

**DOCUMENTATION:** Included      To Follow      Not Required     

**DISPOSITION:**                     

**AGENDA ITEM #**

**ORDINANCE NO. \_\_\_\_\_-2006**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, AMENDING CHAPTER 6 OF THE MONROE COUNTY CODE ENTITLED "BUILDINGS AND CONSTRUCTION" BY AMENDING SEC. 6-90 PROVIDING FOR A FINE SCHEDULE; PROVIDING FOR IMPOSITION OF CIVIL PENALTIES; PROVIDING FOR MINIMUM PENALTIES; PROVIDING FOR ADMINISTRATIVE COSTS; PROVIDING FOR IMPOSITION OF A LIEN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE**

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**WHEREAS**, the Board of County Commissioners finds it necessary to regulate building construction practices to further the public health, safety, and welfare of the citizens of Monroe County; and

**WHEREAS**, Florida Statutes Sec. 489.127 authorizes local governments to enforce codes and ordinances against unlicensed contractors; and

**WHEREAS**, Florida Statutes 489.127 authorizes local governments to establish a schedule of penalties; and

**WHEREAS**, Florida Statutes 489.127 authorizes local government to impose liens on any real or personal property for unpaid fines; and

**WHEREAS**, Florida Statute 489.131 authorizes local government to enforce its codes and ordinances, impose fines and require restitution of licensed contractors pursuant to disciplinary hearings;

**NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

Section 1. Section 6-90 of the Monroe County Code shall be amended as follow\*:

**Sec. 6-90. Powers and duties.**

(a) The examining board shall be the local construction regulation board, and shall have the following powers:

(1) To determine if a license or certificate of competency of any local contractor should be suspended for any violation of this article and to fix the length of time for such suspension;

(2) To call upon members of the industry to advise and assist them;

(3) To determine if a state certified contractor is guilty of fraud or has willfully violated any of the building codes of the county or has, within the past twelve (12) months, been found by the local construction regulation board of any other county or municipality to be



guilty of fraud or a willful building code violation which would have been fraud or a building code violation if committed in the county; and

(4) To determine if the authority of state certified contractors to obtain a building permit should be revoked, suspended or limited to obtaining permits with specific conditions and to set the terms of suspension or conditions.

(b) When the board has reason to believe that any person not licensed by the board or building official has violated any provision of this chapter which relates to the practice of a profession regulated by this board or building department or any rule adopted pursuant thereto, the board or the building official may issue and deliver to such person a notice to cease and desist from such violation. In addition, the board may issue and deliver a notice of cease and desist to any person who aids and abets the unlicensed practice of a profession and/or contracts with such unlicensed person.

(1) Code enforcement inspectors acting under the authority of chapter 6.3 of this Code are hereby designated to enforce the provisions of this article.

(2) Code enforcement inspectors as designated above may issue a citation for any violation of this article whenever, based upon personal investigation, the code enforcement officer has reasonable and probable grounds to believe that such a violation has occurred. The citation form shall be prescribed by resolution of the board of county commissioners and shall contain the following information:

- a. The time and date of issuance.
- b. The name and address of the person to whom the citation is issued.
- c. The time and date of violation.
- d. A brief description of the violation and the facts constituting reasonable cause.
- e. The name of the code enforcement officer.
- f. The procedure for the person to follow in order to:
  - (i) Pay the civil penalty or contest the citation for violations; or
  - (ii) Appear before the contractor's examining board to answer a summons.
- (c) The applicable civil penalty if the person elects not to contest the citation, which penalty shall be pursuant to the following schedules:

*Fine Schedule:*

TABLE INSET:

	First Violation	Second & Subsequent (Repeat) Violations
Unlicensed Activity	\$500.00	Mandatory Notice to Appear
Aiding and Abetting	500.00	Mandatory Notice to Appear
All Other Violations	500.00	Mandatory Notice to Appear

Repeat violations of unlicensed activity shall be referred to the state's attorney for criminal prosecution. All violations subsequent to the third violation shall be heard by the contractors examining board under the disciplinary hearing provisions of this article. A repeat violation is any violation on which a fine has been issued or disciplinary action has been taken where the person had previously had disciplinary action taken against him or received a letter of reprimand in a prior case; and said definition is to apply (i) regardless of the chronological relationship of the acts underlying the various disciplinary actions,



and (ii) regardless of whether the violations in the present and prior disciplinary actions are of the same or different provisions of this chapter.

~~The fine shall be paid to the clerk for the county commission.~~ An administrative fee for costs incurred may be assessed in the amount of the greater of ten (10) percent of the fine or one hundred dollars (\$100.00). Monies collected pursuant to this section shall be used to support administrative costs and future enforcement activities against unlicensed contractors. The fine shall be paid at the offices of Monroe County Building Department.

(d) Any party fined pursuant to this section may appeal to the contractor's examining board for a full meritorious hearing in accordance with provisions of this chapter for administrative hearings by filing a notice for hearing with the secretary of the contractor's examining board within ten (10) days of receipt of service of a citation.

(e) The contractors examining board may impose an administrative fine or civil penalty, as appropriate, pursuant to the provisions of section 6-68(d)(5) and 6-68(e)(2) or this section for any violations of this chapter by the contractors examining board and in the amounts stated in the fine schedule in this section upon a finding of violation when a citation is contested. Pursuant to this paragraph, the board shall conduct a probable cause hearing as to the alleged violation. Upon a finding that probable cause to believe such violation has occurred, the board shall deny the appeal and impose an administrative fine or a civil penalty in an amount no less than one hundred dollars (\$100.00) not less than the amount listed in the citation and no more than the amount of fine possible under this chapter and may assess costs of the proceedings, including but not limited to costs of personnel, equipment and supplies necessary to process the appeal, ~~not to exceed five hundred dollars (\$500.00) in addition to the civil administrative penalty imposed pursuant to paragraph (e) of this section or section 6-68(5), or the reduced amount pursuant to this paragraph, if the board has found mitigating circumstances exist.~~ The board, at its discretion, may reduce the amount of the administrative fine or civil penalty upon a finding of mitigating circumstances.

(f) The act for which the citation is issued shall be ceased immediately upon receipt of the citation. The person charged with the violation shall ~~elect either to correct the violation and pay the civil penalty in the manner indicated on the citation or, within ten (10) days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing before the contractor's examining board to appeal the issuance of the citation by the code enforcement officer.~~

(g) If the fine is not paid within the time period required above or ordered by the board upon appeal, and if no extension has been granted by the board for good cause shown, the board's secretary shall advise the board of the failure to pay and obtain approval to file as a notice of lien in the official records of the county a certified copy of the order imposing the fine. The lien shall run against any real or personal property the violator may own. The lien may be foreclosed in accordance with F.S. ch. 462 489, and ch. ~~6-3~~ 6, Monroe County Code.

(h) Upon any final judgment foreclosing such lien, the court shall award to the board all costs as a result of this violation, including investigation costs, filing fees, court costs, and reasonable attorney's fees.

(i) In addition to or in lieu of any other remedies provided above, the board may seek the imposition of a civil penalty through the circuit court for any violation of the notice to cease and desist. The civil penalty shall be no less than five hundred dollars (\$500.00)



and no more than five thousand dollars (\$5,000.00) for each offense. The court shall award to the board all costs as a result of this violation, including investigation costs, filing fees, court costs, and reasonable attorney's fees.

The provisions of this section shall only apply to the provisions of the code administered by the board and the building department, and this section constitutes the exclusive statement of the board's authority and jurisdiction.

(Ord. No. 16-1975, § 6(H); Ord. No. 21-1986, § 42; Ord. No. 46-1988, § 3; Ord. No. 23-1991, § 1; Ord. No. 32-1993, § 1; Ord. No. 20-1996, § 5; Ord. No. 58-1997, §§ 1, 2; Ord. No. 8-1998, § 2; Ord. No. 25-1998, § 5; Ord. No. 23-1999, § 1; Ord. No. 023-2003, §§ 1-3)

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006

Mayor Charles "Sonny" McCoy	_____
Mayor Pro Tem Dixie M. Spehar	_____
Commissioner George Neugent	_____
Commissioner Glenn Patton	_____
Commissioner David Rice	_____

Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMISSIONERS  
OF MONROE COUNTY

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor Charles "Sonny" McCoy

Dated \_\_\_\_\_